

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11867 of 2004

Between:

Mohd.Muktar Ahmed S/o. Gulam Jeelani
R/o. H.No.18-2-651/A, Quadri Chaman Engine Bowli, Hyderabad.

..... PETITIONER

AND

Depot Manager A.P.S.R.T.C Mehdipatnam Depot, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent in issuing removal order No.E2/1/(16)/97 M.P dated 29-7-1997 without issuing charge sheet, without conducting enquiry, without nominating any independent enquiry officer who was not the subordinate to the respondent, not following the procedure of communication in case of returned unserved letters without calling comments objections in case of conducted enquiry, not issuing show cause notice and removal order on request issuing letter No.2/255 (5)/3MP dt.23.6.2003 stating it is to inform that the removal order Proceedings 1st cited were sent to your residential address but neither the acknowledgment nor the undelivered postal cover has been received in this office" further Violation of Regulation 14 and 15 classification control and appeal of A.P.S R.T C Regulation 11 (1) (3) (4) of Leave Regulation of APSRTC is as illegal, unjust , contrary to law and in violation of Articles of natural justice by granting all consequential benefits, continuity of service with backwages and all attendant benefits and set-aside the removal order No.E2/1(16)/97-MP dated 29-7-97 issued by the respondent herein.

For the Petitioner: MR.MOHD.GHOUSUDDIN, Advocate

For the Respondent: MR.VENKATESWARLU POSANI - S.C. for APSRTC.

The Court, at the admission stage, made the following :

HONOURABLE SRI JUSTICE K.C.BHANU

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W.P.No.11867 of 2004

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ORAL ORDER:

This writ petition is filed questioning the proceedings No.E2/1(16)/97 M.P., dated 29.7.1997 issued by the respondent removing the petitioner from service for his unauthorized absence from duty from 12.5.1996 to 13.3.1997 without any intimation to the respondent or prior sanction of leave from the respondent.

A charge was framed against the petitioner for his unauthorized absence from duty. When the charge sheet, dated 13.3.1997 was sent to the residential address of the petitioner, the same was returned to the sender with an endorsement "Addressee out of Station since seven days". Thereafter, a regular Enquiry Officer was appointed to conduct a detailed enquiry against the petitioner. The Enquiry Officer also sent a letter to the petitioner directing him to participate in the enquiry, which was also returned to the sender with a note thereon "the addressee was not available for seven days". Hence, an exparte enquiry proceedings were conducted and found the writ petitioner guilty of the charge leveled against him. Basing on the enquiry report, the disciplinary authority sent a show cause notice to the petitioner to his residential address, but the same was returned with an endorsement of the postal authorities that no such person is staying in that house. As per rules, the same has been exhibited in the Notice Board and thereafter, the impugned proceedings have been passed.

The learned counsel appearing for the writ petitioner contended that the impugned proceedings were issued without enquiry being conducted and without a copy of the enquiry proceedings being served on the petitioner and the respondent corporation has totally

violated the principles of natural justice in conducting enquiry. He further contended that during the period of unauthorized absence as mentioned in the charge, the writ petitioner was under treatment in a Government Hospital and therefore, he did not abscond from duties. Hence, he prays to set aside the impugned proceedings.

On the other hand, the learned standing counsel for the respondent contended that after following due procedure, a regular departmental enquiry was conducted and an order of removal of the petitioner from service dated 29.7.1997 was passed by the respondent on the ground that the writ petitioner was found to be an unauthorized absentee without prior sanction of leave from the respondent and the remedy for the petitioner is otherwise but not approaching this Court. Hence, he prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent and perused the material on record.

A charge was framed against the writ petitioner that he was an unauthorized absentee from duty from 12.5.1996 to 13.3.1997. A charge sheet was sent to the petitioner by registered post with acknowledgement due calling for his explanation. The postal authorities returned the same as the addressee was out of station, thereafter, a regular Enquiry Officer was appointed. He also sent a notice to the petitioner, which was also returned. After displaying in the notice board about the unauthorized absence of the petitioner from duty, a regular departmental enquiry was conducted. Though the petitioner's counsel stated that the appointment of Enquiry Officer by the disciplinary authority is not in accordance with law, there is no material at this stage to show that the Enquiry Officer is not the authority to conduct any regular departmental enquiry. The jurisdictional aspect of the respondent in appointing an Enquiry Officer is not under challenge. The respondent is the disciplinary authority and he can appoint an Enquiry officer to conduct a regular departmental enquiry in case any employee violated any regulations of the Corporation. Though it is stated that the principles of natural

justice have been violated but as seen from the enquiry report, they have taken all possible steps to inform the writ petitioner about the charge sheet and to call for his explanation with a direction to participate in the enquiry. As the writ petitioner was not available at the address given by him, there is no option left for the respondent-corporation except to place the same on the notice board and proceed with the enquiry. It is not a case of violation of any principles of natural justice because the respondent-corporation has taken all possible steps to see that notices were served on the writ petitioner. On every occasion, the cover sent by registered post to the petitioner was returned to the sender to the effect that either the addressee was not available or the addressee was continuously absent for seven days. Therefore, the recourse to the petitioner is elsewhere because the jurisdiction to initiate or pass appropriate orders as a disciplinary authority is not under challenge.

Viewed from any angle, I do not find any merit in this writ petition. However, the petitioner can seek any proper remedy in any appropriate forum if so advised.

With the above observation, the writ petition is disposed of at the stage of admission. In the circumstances of the case, there shall be no order as to costs.

(K.C.BHANU,J.)

13th July, 2004

bcj

To

1. The Depot Manager, A.P.S.R.T.C., Mehdipatnam Depot,
Hyderabad.

2. Two C.D. copies